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ALEXANDER L. STEVAS,
CLERK

No. 80-877

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

STEPHEN HOPKINS and DOUGLAS D. DONALD,

Petitioners,

-against-

THE RECTOR, CHURCHWARDENS AND VESTRYMEN OF THE PARISH OF CALVARY, HOLY COMMUNION AND ST. GEORGE'S IN THE CITY OF NEW YORK and THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Respondents.

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

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(10631)

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SUPREME COURT OF THE UNITED STATES

STEPHEN HOPKINS and DOUGLAS D. DONALD,

Petitioners,

-against-

THE RECTOR, CHURCHWARDENS AND VESTRYMEN OF THE PARISH OF CALVARY, HOLY COMMUNION AND ST. GEORGE'S IN THE CITY OF NEW YORK and THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Respondents.

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION FIRST DEPARTMENT

The petitioners, Stephen Hopkins and Douglas D. Donald, pray that a writ of Certiorari issue to review the orders of the Supreme Court of the State of New York, Appellate Division, First Department, rendered in these proceedings on March 25, 1980 and November 18, 1980.

STATEMENT OF CASE AND ADDITIONAL DECISION BELOW

This Supplement seeks to bring before the Court for review the order of the Appellate Division affirming the denial of Petitioners' motion to vacate the original judgment (Appendix F). It also confirms, in accordance with the recitation of Respondents (Resp. Br. 1-2) that the Petition is for a writ directed to the Appellate Division with respect to the order of affirmance dated March 25, 1980 (copy annexed hereto as Exhibit I).

On January 15, 1981 the New York State Court of Appeals dismissed Petitioners' appeal to that Court pertaining to the denial of the motion to vacate judgment. A copy of the Court of Appeals' order is annexed hereto as

Appendix H. The motion to vacate had brought to the New York Courts certain developments which occurred since entry of the original judgment including the report of Peat, Marwick, Mitchell & Co. to the effect that the properties proposed to be sold are economically viable, financial statements for 1979 indicating absence of straitened financial circumstances, and the affidavit of the director of the YMCA indicating that the YMCA did not leave Memorial House voluntarily. See Petition pp. 15, 18-19, 20-21.

If the Court grants a writ of certiorari on the March 25, 1980 Appellate Division order, it is respectfully submitted that certiorari should also be granted with respect to the

November 18, 1980 order of the Appellate Division which has now been made ripe for review by this Court as a result of the January 15, 1981 order of the Court of Appeals. Granting certiorari with respect to the November 18, 1980 order would permit Petitioners to present to the Court a fuller record.

The question presented, jurisdictional basis, and other substantive legal issues with respect to the November 18, 1980 Appellate Division order are identical to those presented by the Petition initially.

CONCLUSION

We respectfully request that the Petition as supplemented be granted.

Dated: New York, New York
January 30, 1981

Respectfully submitted,

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Of Counsel,
Michael S. Gruen

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the fifteenth day of January A.D. 1981

PRESENT, Hon. Lawrence H. Cooke, Chief Judge, presiding

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1 Mo. No. 22
The Rector, Churchwardens and Vestrymen of the Parish of Calvary, Holy Communion and St. George's in the City of New York, Respondent,
For Leave to Sell Certain of Its Property,
Stephen Hopkins and Douglas D. Donald,
Appellants,
Attorney General of the State of New York,
Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellants herein and papers having been submitted thereon

and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

Joseph W. Bellacosa
Clerk of the Court

At a term of the Appellate Division of the Supreme Court held in and for the First Department in the County of New York, on March 25, 1980.

Present--Hon. Harold Birns, Justice Presiding
Joseph P. Sullivan
Samuel J. Silverman
J. Robert Lynch
John J. Carro, Justices

The Rector, Churchwardens and Vestrymen of the Parish of Calvary, Holy Communion and St. George's in the City of New York,

Petitioners-Respondents,

For leave to sell certain of its real property,

-against-

Stephen Hopkins and Douglas D. Donald,

Objectants-Appellants,

Robert Abrams, Attorney General of the State of New York, Attorney for Ultimate Charitable Beneficiaries,

Respondent-Respondent.

An appeal having been taken to this Court by the objectants-appellants

from the order of the Supreme Court, New York County (Ascione, J), entered on November 13, 1979, which ordered sale of the property at 207 East 16th Street and 175 Third Avenue; empowered the Rector to execute the necessary documents; ordered that the deeds be reformed to permit the present sale; ordered that the proceeds of the sale be deposited as an endowment fund for the parish; ordered $50,000 of proceeds to be used to renovate "Pierce House"; and ordered that Calvary House be re-named Tracy House,

and said appeal having been argued by Mr. Michael S. Gruen of counsel for the objectants-appellants, by Mr. James J. Terry of counsel for the petitioners-respondents and Sharon Cuff Slater of

counsel for the respondent-respondent; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed on the opinion of Ascione, J., at Special Term, without costs and without disbursements.

ENTER:

JOSEPH J. LUCCHI

Clerk.